IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1105 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
SHARDABEN MADANLAL KHATIK & 9 - Defendant(s)

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Appearance :
MR YN RAVANI for Appellant(s) : 1,
MR PV NANAVATI for Defendant(s) : 1 - 7,9 - 10.
- for Defendant(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 04/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 13.12.85 passed by the Motor Accident Claims Tribunal (Main), Mehsana in MACP No. 253 of 1982 whereby the Tribunal awarded an amount of Rs. 77000/- by way of compensation payable to the appellant by the opponents together alongwith interest at the rate of 6% per annum.

2. The original claimants being the legal

representatives of the deceased had filed claim petition seeking compensation to the tune of Rs. 1,00,000/- in respect of the accident which occurred on 29.06.81 when the husband of the original claimant no.1 was travelling in a truck bearing no. 3327 with his leather goods. At that time, another truck bearing no. GRT 5572 coming from the opposite side in a rash and negligent manner dashed with the truck in which the deceased was travelling thereby killing him. The claim petition came to be filed under the aforesaid circumstances and the Tribunal after hearing the parties passed the aforesaid award.

3. Learned advocate for the appellant has contended that the present appellant ought to have been held not liable to pay the compensation amount as there is a specific condition in the policy not to use the vehicle for hire or reward.

3.1 He has placed reliance on various decisions of this Court and the Apex Court in order to substantiate his contentions. The decisions relied by him are in the cases of **Vanaji Dhulaji v Shivabhai Kashibhai reported in AIR 1980 Gujarat 154, Mallawwa and others v Oriental**

Insurance Co. Ltd. and others reported in 1999 ACJ 1, Oriental Insurance Co. Ltd v Devireddy Konda Reddy reported in 2003 SC 1009[2003(2) SCC 339] and New India Assurance Co. Ltd v Asharani reported in 2003(2) SCC 223.

4. Heard learned counsel for the parties. I have gone through the averments made in the appeal and documents placed on record including the award of the Tribunal. From the perusal of the award, it is clear that the present appellant had strongly contended before the Tribunal that the truck bearing no. 3327 was a goods vehicle and under the terms and conditions of the policy it was to be used only under a private carrier permit and that the policy does not cover the risk for the use of the truck for the conveyance of passenger for hire or reward.

4.1 A perusal of the decisions relied on by the learned counsel for the appellant is relevant at this stage and the same is considered one by one. In the case of **Vanaji Dhulaji (supra)**, this Court has held that vehicle not covered by permit to ply for hire or reward on date of contract of insurance used for that purpose in breach of specific condition in policy which excluded such use and the insurance company is not liable to satisfy award

against insured in respect of third party risks.

4.2 In the case of **Mallawa and others(supra)** the Apex Court has held that the insurance company is not liable for death or injuries sustained by persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously.

4.3 In the case of **Oriental Insurance Co. Ltd (supra)** the Apex Court has taken the view that the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

4.4 In the case of **New India Assurance Co. Ltd (supra),** keeping in view the provisions of the 1988 Act, the Apex Court has taken the same view as in Oriental Insurance Co. Ltd (supra) that as the provisions do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

5. As a result of hearing and perusal of records and in view of the decisions of this Court and the Apex Court, I

am of the opinion that the contentions raised by the present appellant is required to be accepted. The fact that the vehicle in question was a goods vehicle cannot be disputed and therefore the appellant cannot be held liable to undertake third party risk in a case where the vehicle is used for a purpose other than the one for which the policy is covered. In that view of the matter, the award of the Tribunal is required to be modified by not holding the present appellant liable for the compensation payable to the original claimants.

6. In the premises aforesaid, the appeal is allowed. The award of the Tribunal is quashed and set aside qua liability of the insurance company-present appellant. It is made clear that the original claimants shall be entitled to recover the amount which was liable to be paid by the insurance company from the owner of the vehicle. The amount deposited, if any, by the insurance company by way of FDR shall be refunded. However, if the said amount has been withdrawn by the original claimants, it will be open to the insurance company to recover the same from the owner of the vehicle. No order as to costs.

(K.S. JHAVERI, J.)

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